IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2128 of 2005

Between:

1 K. Raghavendra Reddy, S/o Hanumantha Reddy, Hindu,
R/o A.P.H.B. Colony, Yemmaganuru - DMC Kurnool District.
2 The Yemmaganauru Spinning Mills, Venkatapuram, Rep. by its Chairman and Executive Director, Pyarem Neelappa S/o Hanumanthappa, Hindu, aged 52 years, R/o Yemmaganuru.

..... PETITIONER(S)

AND

1 The Recovery Officer, Employees Provident Fund Organization,
1/30, Railway Station Road, Cuddapah - 516 004
2 The Commissioner of Provident Fund. Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more especially one in the nature of Writ of Mandamus declaring the auction of the respondents in proceedings No. AP 2813 SRO:CDP/RECY-2/Knl/2004/ , dt. 10-1-2005 is wholly illegal and arbitrary, and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. P.SRI RAGHU RAM

Counsel for the Respondents : MR. R.N.REDDY

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2128 OF 2005

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ORDER :

The Yemmiganur Spinning Mills Limited, Yemmiganur is the second petitioner, whereas the 1st petitioner is the President of I.N.T.U.C. of the 2nd petitioner Mills. It is not in dispute that a sum of Rs.54,62,411/- is due from the 2nd petitioner mills towards Provident Fund contributions and Recovery Certificates dated 3-4-1999, 20-02-2000, 4-4-2002 and 9-1-2004 were issued under the provisions of the Employees Provident and Miscellaneous Provisions Act, 1952 (for short, 'the Act'). In pursuance thereof, the Recovery Officer, Sub-Regional Officer, Kadapa has ordered sale of attached property i.e., the vacant land situated at Gudikal Village belonging to the

2nd petitioner mills. Consequently, the proclamation of sale dated 10-01-2005 has been issued proposing to sell the property by public auction scheduled to be held on 11-02-2005. The said sale notice is sought to be declared as arbitrary and illegal in this writ petition.

Thought the petitioners do not dispute the fact that a sum of Rs.54,62,411/- is recoverable from the 2nd petitioner mills under the provisions of the Act and that the Recovery Certificates issued against the 2nd petitioner have become final, the only contention raised in this writ petition is that the sale proposed under the impugned notice is detrimental to the interest of the employees. It is alleged that the proposed sale of the entire property without approved layout and permission from the necessary authorities is likely to result in vexatious litigations. It is also alleged that since the respondents failed to fix the upset price, the sale is likely to fetch very low price and there is no possibility of fetching the market rate. It is also contended that instead of the proposed sale through the aegis of the respondent involving huge administrative expenses which would be deducted from the sale proceeds, if the 2nd petitioner is permitted to make a private sale it would fetch a reasonable rate. It is also stated that though the 2nd petitioner made a representation to the Commissioner, Provident Fund seeking permission for private sale, the same has not been considered so far. Hence, according to the petitioners, the impugned sale notice is arbitrary and illegal and is liable to be set aside. Pending the writ petition, the petitioners seek stay of the sale proposed under the impugned sale notice.

Having heard the learned Counsel for the petitioners at length, I am afraid that the relief as prayed for cannot be granted on any one of the aforesaid grounds. At the outset, it is to be noted that the orders passed against the 2nd petitioner under the Provisions of the Act have become final and the petitioners do not dispute the said liability. If that be so, the respondents have rightly issued the impugned notice for sale of the attached property. Absolutely, no case is made out to show that the impugned sale is not in conformity with the procedure prescribed under the provisions of II-schedule to the Income-Tax Act, 1961, which is made applicable for recovery of the amounts recoverable under the provisions of the Act.

The learned Standing Counsel appearing for the respondents while referring to Rules 52 to 56 of the said Rules submits that the impugned notice is in strict compliance with the said provisions and the allegation of the petitioners that in the absence of fixation of upset price the property in question may not fetch reasonable price is untenable and cannot be accepted.

On a perusal of Rule 53 of the said Rules, it is clear that it is sufficient that if the proclamation of sale specifies the reserve price, if any, below which the property may not be sold and it is not mandatory to specify the upset price. Hence, I do not find any substance in the contentions the petitioners to set aside the sale notice on that ground.

The learned Counsel for the petitioners, however, submits that since the 2nd petitioner has made a request seeking permission for private sale of the property in question, the 1st respondent ought not to have proceeded with the proposed sale without considering the said request. The learned Counsel states that in view of the request made by the 2nd petitioner, the 1st respondent-Recovery Officer ought to have postponed the sale as provided under Rule 66 of the Rules to enable the 2nd petitioner to raise the amount due. However, nothing has been placed before this Court show that any such request has been made by the 2nd petitioner and that the same is pending consideration. On the other hand, the learned Counsel for the respondents, under instructions, states that till today, no such representation has been received from the petitioners.

In the circumstances, the writ petition is devoid of any merit and the interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India is unwarranted.

The Writ Petition is accordingly dismissed. No costs.

11th February, 2005.

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To

1 The Recovery Officer, Employees Provident Fund Organization,
1/30, Railway Station Road, Cuddapah - 516 004
2 The Commissioner of Provident Fund. Hyderabad.

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